

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RUSSELL MARTIN

:

CIVIL ACTION

v.

:

FILED

:

JAN 19 2016

:

C/O OFFICER BROOME, et al.

:

NO. 16-0030

MICHAEL E. KUNZ, Clerk
By _____ Dep Clerk

M E M O R A N D U M

TUCKER, Ch. J.

JANUARY 19, 2016

Plaintiff has filed a pro se 42 U.S.C. § 1983 civil rights lawsuit against the City of Philadelphia, the Philadelphia prison system, the Commissioner of the Philadelphia prisons, and the Warden and a sergeant, a major and a correctional officer at the Philadelphia House of Correction. He alleges that, on March 27, 2014, he was sexually assaulted because Correctional Officer Broome slapped him on the bare buttocks after he was strip searched.

With this action, plaintiff submitted a motion to proceed in forma pauperis. As it appears he is unable to pay the cost of commencing this action, leave to proceed in forma pauperis is granted. However, for the reasons which follow, this action will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

In order to bring suit under § 1983, plaintiff must allege that a person acting under color of state law deprived him of his constitutional rights. West v. Atkins, 487 U.S. 42 (1988). The facts described in plaintiff's complaint fail to establish that his constitutional rights have been violated. Plaintiff alleges that, on one occasion, Correctional Broome

slapped him on the bare buttocks after he strip searched him. This isolated incident may be despicable, but it does not involve "a harm of federal constitutional proportions as defined by the Supreme Court." See Boddie v. Schnieder, 105 F.3d 857, 861 (2d Cir. 1997).

An order dismissing this complaint follows.